

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 125 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DANABHAI SHAMBHUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR JV DESAI, Advocate appointed for appellant.
MR K.P. Raval, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

Date of decision: 18/02/98

ORAL JUDGEMENT

The appellant original accused has assailed in this appeal the judgment and order dated 16th February, 1991 passed by the learned Additional Sessions Judge holding appellant guilty under Section 302 of the Indian Penal Code imposing sentence of rigorous imprisonment for

life in Sessions Case no.101 of 1989.

Facts of the prosecution case are as under:

The accused was residing with his wife Valiben and children in village Sartanpur. On the fateful day of 30th June, 1989 at about 13.30 hrs., deceased Valiben and her daughter Manuben were in the house when accused came drunk in the house. He was giving filthy abuses, and therefore, Valiben told him not to utter abuses. As she told accused not to utter abuses, the accused gave a knife blow on the left side of Valiben who fell down there and then and was bleeding. The accused then ran away with the knife. Manuben daughter of accused and Valiben who were present there shouted. On hearing shouts her younger brother Rama came there. Manuben informed him as to what happened and sent him to the field to call his brother Shivabhai and Budhabhai. Shivabhai and Budhabhai came home and they were also informed about the incident by Manuben. By the time it appears that Ex. Sarpanch Gangabhai came to know about the incident. He informed Police Patel Revashanker of Sartanpur about the incident. Police Patel Revashanker informed Rameshbhai Vasava who was on duty in the Talaja Police Station. Rameshbhai directed him to PSI Chavda and PSI Chavda recorded the complaint.

On evidence being registered, investigation was carried out. On completion of the investigation accused was charge-sheeted in the Court of Judicial Magistrate, First Class Talaja who in his turn committed the accused to the Court of Sessions to stand trial.

The learned Additional Sessions Judge, Bhavnagar framed charge against the accused to which he pleaded not guilty and claimed to be tried. The prosecution, therefore, led necessary evidence to prove the charge against the accused. On completion of the evidence of the prosecution, a further statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded. From the further statement, it appears that the defence of the accused is of total denial. According to the accused he is wrongly involved as he was not in good terms with his sons who used to beat him repeatedly. The learned Additional Sessions Judge after hearing the learned Advocate for the prosecution and the defence held the accused guilty of offence punishable under Section 302 of the Indian Penal Code. This judgment and order of conviction is assailed in this appeal.

Learned Advocate Mr. J.V. Desai has assailed

the judgment on the ground that in absence of any independent corroboration, evidence of child witness PW 2 should not have been accepted by the learned Judge. Mr. Desai further contended that the evidence of the prosecution witnesses do not inspire any confidence and requires to be rejected. Mr. Desai further contended that the possibility of the accused being wrongly involved because of inimical relations with his sons cannot be ruled out and benefit of doubt should go to the accused.

Mr. K.P. Raval while supporting the judgment of the learned trial Judge has contended that the evidence of child witness PW 2 is cogent, convincing and corroborated by other circumstances on record, namely, her immediate conduct to call his brother and inform them of the incident. There is no variance in her version nor any contradiction in her evidence is brought out to reject her evidence. Mr. Raval therefore contended that the appeal should be dismissed.

The incident took place at about 1.30 noon of 30th June, 1989 in the house of the accused itself when the minor daughter Manuben was present in the house. Manuben PW 2 has deposed: " I was at my home. It was noon time. My father Danabhai came drunk from outside. He started giving filthy abuses. My mother told my father not to give filthy abuses. My father therefore gave blow to my mother on her left side by knife. My mother fell down. She was bleeding. My father ran away. He ran away with knife. As I shouted, my younger brother Rama came there. I told him what happened." This witness has denied that she is tutored. It is suggested that she has not seen anything but she was informed by her brother. She has denied that she had also gone to their field with her two brothers. Omission is proved to the effect that she has not stated before the police that her father had come drunk. There is nothing in the cross examination of this witness which may weaken her say in the examination-in-chief. According to PW 2 she called her brother Rama and on arrival of Rama she informed him about the incident and asked to go to field and called the other brother Shivabhai and Budhabhai. Shivabhai had come. Shivabhai is examined as PW 6. He has deposed to the effect that on his arrival it was about 1.00 to 2.00 p.m.. Rama came and told that father has killed mother in Osri and had run away. We brothers, therefore came home. My mother was lying in Falia. She was injured on the left side and was bleeding. I and my brother Budha bodily lifted my mother and brought her in Osri. My sister Manuben was sitting besides my mother and was

crying. I inquired from her as to what happened. She replied that father has given knife blow to mother and had run away. After some time Ex. Sarpanch Gabhabhai Bhagabhai had come to my house. In the cross examination, it is denied that the relations of his father as well as mother were beating his father repeatedly. It is denied that because their father used to beat them repeatedly they have wrongly involved their father. The question is that if someone had killed the mother why the sons should allow that real culprit to go and involve their father. One fact emerges from the evidence that assuming that they had strained relations. even then the fact remains that they were staying together. It is not their case that their relations had reached to such an extent that they were staying separately. Thus, evidence of Manuben PW 2 is corroborated by her conduct of immediately calling younger brother Rama, informing him about the incident and asking him to call the brothers and on their arrival the incident is revealed to them. Apart from this incident is of 30th June, 1989 of about 1.00 to 1.30 p.m.. The accused is arrested on 1st July, 1989 at about 21.00hrs to 21.30 hrs.. He is found from bed no.4 of Sir T Hospital Isolation Ward. He had injuries on left hip, right hip, right wrist and on the waist portion. It is the case of the accused in his further statement that his sons were repeatedly beating him and they were not on terms at all with him. If accused was assaulted by his sons he could have explained injuries on his person at least in his further statement. If he was assaulted by his son and was injured as stated in arrest Panchnama Exh.22 he could have as well shown case history wherein he must have disclosed how he is injured. He could have as well said at what point of time he was injured. In absence of any such evidence it is his duty to explain the injury on the person of his wife and he must be in the house or he may have gone to the house in the night of 30th June, 1989 when he must have learnt that his wife has died. Ignorance of all these things and no explanation forthcoming for the same in our opinion is a circumstance to be read against the accused.

Learned Advocate Mr. Desai has contended that the circumstances relied on by the prosecution as to discovery of weapon cannot be relied upon. In our opinion, he has rightly contended the same. Weapon is found from an open place where there is a public access. We therefore do not propose to take that circumstance as a corroborative piece of evidence to corroborate PW 2. Mr. Desai has further contended that the weapon article no.6 on which the prosecution relies cannot cause injury

found on the person of the deceased. Injury on the person of the deceased has sharp edges on both the extremities. The Doctor PW 3 in his evidence in examination in chief has stated that the said injury can be caused by article no.6. In cross examination he has stated that article no.6 knife has sharp edge on one side and the other side is blunt. Both the ends of injury were sharp. Injury on the person of the deceased could be caused by weapon having both sharp edges. When the Doctor deposed in examination-in-chief that the injury on the person of the deceased can be caused by article no.6, he very well knew that article no.6 has only one sharp edge. Therefore, reading the evidence of the Doctor properly it can be said that injury on the person of the deceased can also be caused by double edged weapon. It cannot be caused by a one edged weapon. Therefore, this circumstance also will not help the defence.

Neither party has disputed that the deceased died a homicidal death. Therefore we do not discuss the medical evidence in detail.

No other contentions have been raised.

In the result, the appeal fails and is dismissed.

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